

### Requests for parental leave submitted by facsimile or e-mail are invalid

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Parental leave must be applied for in writing. A facsimile or an e-mail will not suffice.

#### Decision

In its judgment of 10 May 2016 (Ref. 9 AZR 145/15), the Federal Labour Court was called upon to rule on whether a facsimile transmission suffices to comply with the written-form requirement contained in § 16(1) sent. 1 of the Federal Parental Allowance and Parental Leave Act (*Bundeselterngeld- und Elternzeitgesetz – BEEG*) and whether it triggers the protection against dismissal under § 18(1) sent. 1 of the Federal Parental Allowance and Parental Leave Act.

In the case at issue, an employee notified her employer per facsimile transmission that she would take parental leave after the birth of her child. Following the period of maternity leave, the employer terminated the employment relationship without first obtaining the approval of the occupational health and safety authorities as required by § 18(1) sent. 4 of the Federal Parent Allowance and Parental Leave Act. The employer defended its action by arguing that the facsimile did not constitute a valid request for parental leave and that the employee did not therefore qualify for the special protection against dismissal pursuant to § 18(1) sent. 1 of the Federal Parental Allowance and Parental Leave Act.

The lower courts decided against the employer and found that the facsimile represented an effective formal request for parental leave pursuant to § 16(1) sent. 1 of the Federal Parental Allowance and Parental Leave Act. It was assumed that the employee was eligible for special protection against dismissal pursuant to § 18(1) sent. 1 of the Federal Parental Allowance and Parental Leave Act and the dismissal was ruled invalid (Frank-

furt/Main Labour Court, judgment of 27 May 2014, Ref. 10 Ca 8834/13 and Hesse Higher Labor Court, judgment of 8 Jan. 2015, Ref. 9 Sa 1079/14).

The Federal Labour Court ruled in favor of the employer, stating that neither a facsimile nor an e-mail satisfied the written-form requirement of § 16(1) sent. 1 of the Federal Parental Allowance and Parental Leave Act. According to the Federal Labour Court, a request for parental leave sent by facsimile or e-mail is void. As a result, the employee had not effectively applied for parental leave, which meant that she was not entitled to special protection against dismissal and that dismissal by the employer was valid.

The Federal Labor Court's only qualification was to the effect that an employer could under certain circumstances be considered to be acting in bad faith by relying on the written-form requirement contained in § 16(1) sent. 1 of the Federal Parental Allowance and Parental Leave Act, but the court saw no indication of such bad faith on the part of the employer in the present case.

#### Implications for practice

The decision of the Federal Labor Court is welcome. It clarifies the meaning of § 16(1) sent. 1 of the Federal Parental Allowance and Parental Leave Act for employers: in order to be valid, a request for parental leave must be made in writing, i.e., the employee must submit a personally signed notice. Any request for parental leave made by facsimile or e-mail will be considered invalid on formal grounds and will not suffice to trigger special protection against dismissal.

The decision of the Federal Labour Court is also consistent and makes it clear that an employer is not acting in bad faith by initially failing to react to a request that is

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invalid on formal grounds and than taking measures – e.g., dismissal – if the employee fails to appear at work during the alleged parental leave.

## Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr. Josef Toma on +49 30 884503-115 or by email to [jtoma@goerg.de](mailto:jtoma@goerg.de). For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

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